

## REMARKS

The applicant cancels claims 1(amended) and 4(amended) through 24 and asserts claims 25 through 44 now added to the application. The amendments to the application are believed to obviate all pervious rejections. The applicant also files herewith a Declaration of Assignee, executed by the President and Chief Executive Officer of Airline Automation, Inc., also known as AAI, the assignee not only being the owner of the present application for patent but also of the trademark "Predator". As is clearly to be seen in the Declaration, the product mentioned in the news releases made of record herein and which product was used and sold as of the dates of the news releases is not the patentable improvement disclosed in the present application and recited in claims 25 through 44. Therefore, rejections under 35 USC 102(a) and 35 USC 102(b) are inappropriate relative to claims 25 through 44.

The applicant wishes to note also that the applicant's admitted prior art or Henderson do not pertain to the subject matter of claims 25 through 44. Still further, the holding by the CCPA in 1958 in a matter known as *In re Venner* has long since lost usefulness as "good law". This case came to be decided in a time when "automation" as in the use of computers and software was not even a remotely considered possibility much less the reality of today. While there may not exist any explicit overturning of *In re Venner*, notice should be taken that a particular holding by a court need not be explicitly overturned in order to be null and void. Literally thousands of decisions on virtually every point of law imaginable have gone by the wayside without being expressly overturned in decisions that forged new law.

Notice therefore must be taken of decisions which now control such as *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368, 47 USPQ 2d 1596 (Fed. Cir. 1998), cert denied, 119 S.Ct. 851 (1999) among many others which hold that the financial services and

systems for providing such services recited in U.S. Patent 5,193,056 were patentable. The patent in question, as is the case with the Merrill Lynch patents United States Patents 4,346,442; 4,376,978; 4,597,046 and 4,774,663 which also relate to cash management, asset management and financial services inter alia, "automates" methodology which certainly could be practiced by a man in a back room wearing a green visor if only he could live long enough. However, the "automation" thereof according to the technology disclosed in those patents produced a result not previously obtainable and not obvious, the methods and systems so disclosed being patentable as held by the courts.

Further on point, United States Patent 5,794,207 to Priceline.com discloses the use of a computer to conduct a "reverse auction", this term being essentially a relatively fancy way to describe bartering, a human activity that may well have preceded the activity generally believed to be the oldest known human activity. Rather than face an actual trial when charged with infringement by Price.com under this patent, no less an entity than Microsoft through partially owned Expedia decided to license this patent and is now paying royalties to Priceline.com along with other royalty-paying entities such as Alliance Mortgage Company, Budget-Rent-A-Car and WebHouse Club as examples. The basic methods "automated" by the invention of U.S. Patent 5,794,207 were capable of being accomplished "manually" and had been so accomplished prior to the invention of 5,794,207. However, the "automation" of such methods previously known was indeed patentable by virtue of producing a new and unobvious result, that result being previously unavailable in human experience.


The Examiner cannot therefore simply cite a 45 year old case which is not even on point as to subject matter and which has no comprehension of present technology as a justification for his blanket assertion that *In re Venner* precludes patenting of the automation of a known method.

This bald contention flies in the face of the last 30 years of evolution in the patent law. Of greater import, however, the methods and systems of claims 25 through 44 herein asserted do not recite known methods and systems and are thus not susceptible to rejection whether or not considered in light of *In re Venner*.

The applicant herein asserts claims 25 through 44 which recite an improved flight firming process and system conceived and implemented in June of 2000 in response to a need to practice flight firming more efficiently than had previously been possible with automated flight firming technology previously practiced by the assignee prior to June of 2000. Independent claims 25 and 33 respectively recite process and apparatus for improved flight firming wherein the recited method and means permit flight firming to be scaled to the degree necessary to accommodate the higher volume of operations required to process volume associated with the requirements of a major airline. The automated flight firming methodology and systems of the claims herein asserted permits inter alia the scaling and optimal practice of the assignee's methods and systems. The disclosure provided in the present application relative to the "traffic cop" function is central to the invention herein claimed.

Favorable consideration of the claims herein asserted is requested.

Respectfully submitted,

  
Kenneth E. Darnell  
Reg. No. 26541

PO Box 16362  
Portal Arizona 85632  
  
520 558-2216